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FIRST GENERAL COUNSEL'S REPORT

CELA

MUR: 6899

DATE COMPLAINT FILED: Nov. 3, 2014

DATE OF NOTIFICATIONS: Nov. 7, 2014

LAST RESPONSE RECEIVED: Dec. 9, 2014

DATE ACTIVATED: February 2, 2015

EXPIRATION OF SOL: October 23, 2019

(earliest)/November 20, 2019 (latest)

ELECTION CYCLE: 2014

COMPLAINANT:

Patrick Long, Campaign Manager

Mary Ellen Balchunis for Congress

RESPONDENTS:

Pat Meehan for Congress and Louis Schiazza

in his official capacity as treasurer

Republican Federal Committee of Pennsylvania and

Carolyn Welsh in her official capacity as treasurer

Pat Meehan

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30101(8)(B)(ix), (9)(B)(viii)¹

52 U.S.C. § 30116

52 U.S.C. § 30120(a)

11 C.F.R. § 100.87

11 C.F.R. § 100.147

11 C.F.R. § 109.21

11 C.F.R. § 110.11

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint alleges that the Republican Federal Committee of Pennsylvania ("RFCP") distributed a mailer on behalf of congressional candidate Pat Meehan that failed to include a disclaimer stating whether it was authorized by Meehan or Pat Meehan for Congress

¹ On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 to new Title 52 of the United States Code.

1 ("Committee"), Meehan's authorized committee. Compl. at 1. The Complaint also alleges that
2 the Committee must have provided the two photographs of Meehan used in RFCP's mailer
3 because they "do not appear to be publicly available." *Id.* RFCP responds that the mailer
4 qualifies for the "volunteer materials" exemption, making an authorization statement
5 unnecessary. RFCP Response at 1. RFCP further asserts that it did not obtain the photographs
6 used in the mailer from the Committee or Meehan. *Id.* The Committee responds that it had no
7 involvement with or connection to the mailer. Committee Response at 1.

8 It appears that the mailer satisfies the volunteer materials exemption, thus, it did not
9 require an authorization statement. The disclaimer, however, did not contain all the required
10 information inside a printed box. Further, there is no information supporting the allegation
11 regarding the photographs. Therefore, we recommend that the Commission dismiss the
12 allegation that RFCP violated 52 U.S.C. § 30120(a)(2) or (3) (formerly 2 U.S.C. § 441d(a)(2)
13 or (3)), find no reason to believe that the Committee or Meehan violated 52 U.S.C. § 30120
14 (formerly 2 U.S.C. § 441d), and find no reason to believe that RFCP violated 52 U.S.C.
15 § 30116(a)(2)(A) (formerly 2 U.S.C. § 441a(a)(2)(A)), or that the Committee violated 52 U.S.C.
16 § 30116(f) (formerly 2 U.S.C. § 441a(f)). Finally, we recommend that the Commission close the
17 file.

18 II. FACTUAL AND LEGAL ANALYSIS

19 RFCP is a state party committee. *See* RFCP Statement of Organization, filed November
20 2, 2011, at 2. Its two-page mailer shows two photos of Meehan meeting with constituents and
21 touts Meehan's record on "protecting Social Security and Medicare." *See* Compl., Exh. 1. The
22 mailer includes the Committee's campaign logo, which reads "Meehan for Congress."² *Id.* The

² *See* www.meehanforcongress.com (same logo).

1 mailer's disclaimer states, "Paid for by the Republican Federal Committee of Pennsylvania," and
2 the return address on the mailer includes RFCP's street address and internet address. *See id.*³

3 **A. Disclaimers and the Volunteer Materials Exemption**

4 Under the Act, any public communication, such as a mass mailing,⁴ made by a political
5 committee must display a disclaimer. 52 U.S.C. § 30120(a) (formerly 2 U.S.C. § 441d(a));
6 11 C.F.R. § 110.11. If the mailer is authorized by a candidate or the candidate's authorized
7 committee, but is paid for by another person, the mailer must state that the other person paid for
8 it, and that the candidate's committee authorized it. 52 U.S.C. § 30120(a)(2) (formerly 2 U.S.C.
9 § 441d(a)(2)). If the mailer is not authorized by a candidate or candidate's committee, the
10 disclaimer must provide the payor's name, street address, phone number or internet address, and
11 state that the mailer is not authorized by any candidate or candidate committee. 52 U.S.C.
12 § 30120(a)(3) (formerly 2 U.S.C. § 441d(a)(3)); 11 C.F.R. § 110.11(b)(3). If, however, the
13 mailer satisfies the volunteer materials exemption, the disclaimer on the mailer need not include
14 an authorization statement. 11 C.F.R. § 110.11(e).

15 Under the volunteer materials exemption, the costs of certain campaign materials paid for
16 by a state or local party committee and used in connection with volunteer activities on behalf of
17 the party's nominee are neither contributions nor expenditures. *See* 52 U.S.C. § 30101(8)(B)(ix),
18 (9)(B)(viii) (formerly 2 U.S.C. § 431(8)(B)(ix), (9)(B)(viii)). To qualify for the volunteer
19 materials exemption, mailers must be sorted for bulk mail treatment and physically delivered to a

³ From October 20-27, 2014, RFCP paid \$75,483 to Red Maverick Media, a communications vendor, and \$15,590 to the U.S. Postal Service in connection with "Meehan mail," for a total of \$91,703. *See* 2014 Post-General Report, filed on December 3, 2014, at 193, 195-96, 214, 216-17, and 222. The Meehan mailer at issue, however, is not specifically identified in RFCP's disclosure reports, and the Committee made no disbursement in connection with Meehan on October 23, 2014, the date the volunteers apparently worked on the mailer. Thus, we are unable to determine the precise cost of the mailer.

⁴ A "mass mailing" is a mailing by United States mail or facsimile of more than 500 pieces of identical or substantially similar matter within any 30-day period. 11 C.F.R. § 100.27. The photographs attached to RFCP's response strongly suggest that the Meehan mailer was a mass mailing. *See* RFCP Resp., Exh. 1 (Zach Niles Statement Attachments).

1 post office by volunteers, and they cannot "be used in connection with ... direct mail," which
2 means "any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists."
3 11 C.F.R. §§ 100.87(a), 100.147(a);⁵ Factual & Legal Analysis at 7, MUR 5598 (Utah
4 Republican Party).⁶ And, as mentioned above, disclaimers on mailers that satisfy the volunteer
5 materials exemption must include a "paid for by" statement and the payor's name, street address,
6 phone number or web address, but not an "authorized by" statement, even if a candidate
7 authorized the mailer. *See* 11 C.F.R. § 110.11(a), (e).

8 In its sworn Response, RFCP argues that the mailer qualifies for the volunteer materials
9 exemption because volunteers performed work on the mailing, it did not use a commercial
10 mailing list, and it only used federal funds to pay for the mailing. RFCP Resp. at 1. In a sworn
11 statement, RFCP's "non-allocable mail coordinator" attests that he personally supervised the two
12 volunteers who worked on the Meehan mailing. *See* RFCP Resp., Exh. 1 (Zach Niles
13 Statement). Niles attached a volunteer sign-in sheet, dated October 23, 2014, and eleven
14 photographs that show two volunteers unpacking, addressing, and transporting the mailing to the
15 post office. *See* RFCP Resp., Exh. 1 (Niles Statement Attachments). The Complaint does not
16 allege any facts that show that RFCP did not satisfy the exemption's requirements.

17 We conclude that the mailer at issue qualifies for the volunteer materials exemption and,
18 therefore, RFCP's disclaimer did not require an authorization statement. RFCP is a state party
19 committee, and its response is supported by a sworn statement and many pictures showing that
20 two RFCP volunteers unpacked, addressed, and delivered the mail pieces to the post office.

⁵ Although not in dispute in this MUR, the exemption also requires that the communication's costs be paid for with federal funds and not involve the use of national party funds. *See* 11 C.F.R. §§ 100.87(a)-(g), 100.147(a)-(g).

⁶ After finding reason to believe and authorizing an investigation in MUR 5598, the Commission ultimately dismissed the matter in an exercise of its prosecutorial discretion. *See* Statement of Reasons, Comm'rs. Petersen, Bauerly, Hunter & Weintraub, MUR 5598 (Utah Republican Party) (dismissing matter where volunteers stamped mailers and loaded them onto a truck, but commercial vendor printed addresses on mailers, sorted them by postal carrier route, and delivered mailers to post office).

1 These activities are similar to those the Commission has found sufficient to meet the exemption,
2 which include stamping, sorting, and bundling mail pieces, and delivering them to the post
3 office. *See* MUR 4851 (Michigan Republican State Committee) (exemption applied where
4 volunteers stamped, placed address labels on mailers, and delivered mailers to post office); *see*
5 *also* MUR 3218 (Blackwell for Congress) (volunteers stamped and sorted the mail pieces into
6 the requisite postal/zip code categories and transported them to the post office); MUR 4754
7 (Republican Campaign Committee of New Mexico) (same).⁷ Thus, RFCP has shown that its
8 volunteers distributed the materials, as required by the regulation. *See* 11 C.F.R. §§ 100.87(d),
9 100.147(d).

10 Because the mailer appears to satisfy the volunteer materials exemption, the disclaimer
11 on the mailer only needed to state that RFCP paid for it and to provide RFCP's full name, street
12 address, and web address. *See* 11 C.F.R. § 110.11(b)(3), (e). The mailer contained all this
13 information. The mailer's disclaimer, however, was deficient because it did not include all the
14 required information inside a printed box. 52 U.S.C. § 30120(c)(2) (formerly 2 U.S.C.
15 § 441d(c)(2)). The box contained RFCP's full name and its "paid for by" statement, but not its
16 street and web addresses. *See* Compl., Exh. 1. The return address on the mailer, however,
17 provided the missing information. *See id.* Because all the required information was readily
18 apparent on the mailer, we recommend dismissing the allegation that the disclaimer on RFCP's
19 mailer was inadequate. *See, e.g.,* MUR 6683 (Fort Bend Democratic Party) (Commission
20 dismissed disclaimer violation where Committee was identified elsewhere in the

⁷ The SOR in MUR 5598 describes additional, similar scenarios the Commission has found to satisfy the exemption. *Id.* at 3-4.

1 communication). We further recommend that the Commission find no reason to believe that
2 Meehan or the Committee violated the Act by not complying with the disclaimer requirement.⁸

3 **B. Use of Photographs**

4 The Complaint alleges that RFCP used two Meehan campaign photographs in the mailer,
5 and although it does not allege a specific violation, the Complaint appears to suggest that the use
6 of the photos resulted in a contribution from RFCP to the Committee, either through
7 republication or coordination.⁹ See Compl. at 1. The Complainant specifically alleges that
8 RFCP used two photographs of Meehan that she was unable to locate on the Committee's
9 website, Flickr, or Facebook pages. See *id.* Thus, Complainant surmises that the Committee
10 provided the photos to RFCP. *Id.* RFCP flatly denies that it received the photographs from
11 Meehan or the Committee. See RFCP Resp. at 1. And the Committee asserts that it had no
12 connection to or involvement with the mailing. See Committee Resp. at 1.

13 Both RFCP's and the Committee's denials are sworn, and Complainant cites nothing,
14 other than the inability to find the pictures on Meehan's internet sites, to cast doubt on these
15 denials. And there is nothing in the record to support the Complainant's speculative allegation.
16 Accordingly, we recommend that the Commission find no reason to believe that RFCP made and

⁸ The Complaint alleges that Meehan and the Committee violated the disclaimer statute although under the Act, it appears that only the person making the "disbursement" for the communication at issue has a duty to comply with the disclaimer obligations. 52 U.S.C. § 30120(a) (formerly 2 U.S.C. § 441d(a)).

⁹ Under the Act, the "financing by any person of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his campaign committees, or their authorized agents shall be considered to be an expenditure." 52 U.S.C. § 30116(a)(7)(B)(iii) (formerly 2 U.S.C. § 441a(a)(7)(B)(iii)).

In addition, Commission regulations provide a three-prong test to determine if a communication is a coordinated communication. 11 C.F.R. § 109.21(a). First, the communication must be paid for, in whole or in part, by a person other than the candidate or authorized committee (the payment prong). 11 C.F.R. § 109.21(a)(1). Second, the communication must satisfy one of the five content standards (the content prong). 11 C.F.R. § 109.21(a)(2), (c). Third, the communication must satisfy one of the five conduct standards (the conduct prong). 11 C.F.R. § 109.21(a)(3), (d). A payment for a communication satisfying all three prongs of the test is made for the purpose of influencing a federal election, and, therefore, is an in-kind contribution. See 52 U.S.C. § 30116(a)(7)(B)(i) (formerly 2 U.S.C. § 441a(a)(7)(B)(i)).

the Committee accepted an excessive contribution. We finally recommend that the Commission close the file.

III. RECOMMENDATIONS

1. Dismiss the allegation that the Republican Federal Committee of Pennsylvania and Carolyn Welsh in her official capacity as treasurer violated 52 U.S.C. § 30120(a)(2) or (3) (formerly 2 U.S.C. § 441d(a)(2) or (3));
2. Find no reason to believe that the Republican Federal Committee of Pennsylvania and Carolyn Welsh in her official capacity as treasurer violated 52 U.S.C. § 30116(a)(2)(A) (formerly 2 U.S.C. § 441a(a)(2)(A));
3. Find no reason to believe that Pat Meehan for Congress and Louis Schiavza in his official capacity as treasurer violated 52 U.S.C. §§ 30116(f) or 30120 (formerly 2 U.S.C. §§ 441a(f) or 441d);
4. Find no reason to believe that Pat Meehan violated 52 U.S.C. § 30120 (formerly 2 U.S.C. § 441d);
5. Approve the attached Factual and Legal Analyses;
6. Approve the appropriate letters; and
7. Close the file.

4.2.15
Date

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